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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

In re	Case Nos.	11-41431 RLE 11-41432 RLE 11-41433 RLE 11-41434 RLE
Round Table Pizza Inc.,		
Debtor.		
In re	Chapter 11	
Round Table Development Co.,		
Debtor.		
In re		
The Round Table Franchise Corp.,		
Debtor.		
In re		
Round Table Pizza Nevada LLC,		
Debtor.		

**MOTION FOR APPROVAL TO ASSUME  
EXECUTORY INSURANCE AND  
PREMIUM FINANCING AGREEMENTS**

Judge: Hon. Roger Efremsky  
Date: February 11, 2011  
Time: 10:30 a.m.  
Place: United States Bankruptcy Court  
1300 Clay Street  
Oakland, California

## **I. INTRODUCTION**

Round Table Pizza, Inc., the parent corporation, and two subsidiaries, The Round Table Franchise Corporation, which operates the franchise business, and Round Table Development Company, which operates the company-owned stores; and Round Table Pizza Nevada LLC, which is wholly owned by Round Table Development Company, the joint debtors and debtors in possession in the above captioned Chapter 11 reorganization cases (collectively "Round Table" or the "Debtor"), hereby jointly move the Court for an order authorizing the assumption of insurance premium and financing agreements (the "Insurance Financing Motion").

9        This Insurance Financing Motion is based on the Memorandum of Points and Authorities  
10      set forth herein, the NOTICE OF HEARING ON FIRST DAY MOTIONS (the "Omnibus Notice"), the  
11      DECLARATION OF J. ROBERT McCOURT IN SUPPORT OF FIRST DAY MOTIONS (the "Omnibus  
12      Declaration") filed concurrently herewith and incorporated herein by reference, the pleadings and  
13      papers on file herein, and upon such oral and documentary evidence as may be presented at the  
14      hearing on the Insurance Financing Motion. By a separate application, Debtors have requested an  
15      order shortening time for notice and setting a hearing on this matter and other "first day" motions  
16      on an expedited basis.

## II. JURISDICTION

18 On February 9, 2011 (the “Petition Date”), the Debtors filed their voluntary petitions for  
19 relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the  
20 United States Bankruptcy Court for the Northern District of California.

21 The Court has jurisdiction over this case and this Insurance Financing Motion pursuant to  
22 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C.  
23 § 157(b)(2)(A). Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409(a).

24 The statutory basis for the relief requested herein is § 365(a) of the Bankruptcy Code.

### III. FACTS

26 | A. Background

27 Round Table's first restaurant opened in Menlo Park, California in 1959. Over the past 50  
28 years, Round Table has grown to dominate the Northern California market for pizza, to become a

1 major West Coast chain, with nearly 500 stores in seven States, and to engage in international  
2 franchise development.

3 During the same period, Round Table diversified from acting exclusively as a franchisor to  
4 also operating company owned stores, ultimately acquiring and developing 140 company-owned  
5 stores and swelling its employee base from 70 to a peak of over 3,000 employees.  
6

7 During the decade prior to the Great Recession, Round Table enjoyed tremendous growth.  
8 Between 1997 and 2006, revenues grew from \$15 million to \$120 million per year, and operating  
9 profits grew from \$4.3 million to \$10.5 million. In February of 2007, Round Table obtained a  
10 new credit facility. Although Round Table restructured its business to adjust to the Great  
11 Recession, the terms of the credit facility could not be met by that restructured business. Efforts to  
12 renegotiate the terms of the credit facility were unsuccessful.  
13

14 A fuller presentation of Round Table's background, the circumstances which led to the  
15 instant Chapter 11 filing, and Round Table's expectations regarding its reorganization is set forth  
16 in the Omnibus Declaration.

17 In connection with Round Table's Employee Stock Option Plan (the "ESOP"), an  
18 independent appraiser valued Round Table at \$45 million approximately one year ago. Round  
19 Table engaged in marketing efforts immediately prior to the Petition Date, which confirmed a  
20 value in that range. General Electric Capital Corporation ("GECC") / Prudential Insurance of  
21 America ("Prudential") are owed \$30 million in the aggregate, suggesting that Round Table should  
22 generate a significant recovery to creditors, and potentially a recovery to the ESOP which holds its  
23 equity as well.

24 **B. Intended Reorganization**

25 There are two core aspects to Round Table's business: acting as a franchisor to  
26 independent third party owner-operators, and operating company-owned stores.

27 There are currently 355 franchised stores, with 148 franchisees. The franchise base is  
28 highly diversified: 91% of the franchisees own five stores or less, and only two franchisees own

1 20 to 25 stores. Management believes that the franchise segment of Round Table's business is  
2 sound, produces stable profits and does not require material reorganization.

3 Round Table operates 128 company-owned stores. Although most of them are profitable,  
4 a number of the stores have been unable to operate profitably in the current economic  
5 environment, generating significant losses. Over the first 4 to 6 months of its Chapter 11 case,  
6 Round Table intends to close unprofitable stores and to renegotiate leases with respect to its  
7 marginal stores. Within 4 to 6 months, Round Table expects that its remaining base of company-  
8 owned stores will be stable and profitable.

9 Round Table expects to have maximized the value of the chain, through store closings and  
10 lease renegotiations, by the conclusion of the initial phase of its reorganization, after which it  
11 intends to complete its reorganization by embarking on one of two paths.

12 If it appears that an appropriate value can be realized for the benefit of all of its  
13 constituencies through a sale, Round Table is amenable to engaging in that process.

14 On the other hand, if problems in the economy and the credit industry make it impossible  
15 to realize an appropriate value for the company this year, Round Table will propose a Plan of  
16 Reorganization which restructures its debt so that it can operate successfully for a period of  
17 perhaps five years, by the conclusion of which it would expect to sell the business or refinance the  
18 debt.

19 **C. The Insurance Policies**

20 Round Table maintains almost a dozen insurance policies in the operation of their  
21 business, including worker's compensation, commercial general liability, property insurance, and  
22 directors and officers coverage. The aggregate annual cost for the insurance premiums is  
23 approximately \$2.3 million, which is financed through the following four entities: (a) Flatiron  
24 Capital, (b) Fireman's Fund Insurance, (c) Edgewood Partners Insurance Center, and (d) Imperial  
25 Credit Corporation. A list of the insurance policies and their respective financing entity is  
26 attached hereto as **Exhibit A**.

27 Because of the nature of Round Table's business operations and the value of its assets, it  
28 cannot afford to be without the coverage provided by these policies. In addition, cancellation of

1 the various insurance coverage would be a default under the Credit Agreement (the "Credit  
2 Agreement") with Debtors' secured lenders GECC and Prudential. Moreover, if Round Table's  
3 worker's compensation coverage lapses, Round Table would be in violation of state law.

4

5 **IV. RELIEF REQUESTED**

6 Round Table requests that this Court approve the assumption of the insurance and  
7 premium financing agreements described above, conditioned upon the curing of all defaults  
8 thereunder, if any, as provided under Bankruptcy Code § 365.

9

10 **V. BASIS FOR RELIEF REQUESTED**

11 Section 365 of the Bankruptcy Code provides, in pertinent part, as follows:

12 (a) except as provided in sections 765 and 766 of this title and in  
13 subsections (b), (c), and (d) of this section, the [debtor-in-  
14 possession], subject to the court's approval, may assume or  
15 reject any executory contract or unexpired lease of the  
16 debtor.

17 (b)(1) if there has been a default in an executory contract or  
18 unexpired lease of the debtor, the [debtor-in-possession] may  
19 not assume such contract or lease unless, at the time of  
20 assumption of such contract or lease, the [debtor-in-  
21 possession] –

22 (A) cures, or provides adequate assurance that the [debtor-in-  
23 possession] will promptly cure, such default . . . .;

24 (B) compensates, or provides adequate assurance that the  
25 [debtor-in-possession] will promptly compensate, a party  
26 other than the debtor to such contract or lease, for any actual  
27 pecuniary loss to such party resulting from such default; and

28 (C) provides adequate assurance of future performance under  
such contract or lease.

29 The standard applied for approval of assumption of an executory contract is the "business  
30 judgment" standard, which requires the debtor to provide a sufficient showing that the  
31 performance of the contract would be advantageous to the estate and that the estate will be able to  
32 perform the contract. If both questions are resolved in the affirmative, the debtor is normally  
33 allowed to assume the contract, regardless of opposition to the assumption by the other party to the  
34

1 contract. In re Del Grosso, 115 B.R. 138 (B. N. D. Ill. 1990); In re Chi-Feng Huang, 23 B.R. 798  
2 (9th Cir. 1982).

3 Round Table must have insurance to properly maintain their business operations and  
4 comply with its obligations under the Credit Agreement. For example, under California law, all  
5 employers must maintain worker's compensation coverage. Round Table's commercial general  
6 liability policy provides coverage for any accidents or "slip and falls" that may occur at any  
7 restaurants operated by Round Table. Maintaining existing insurance coverage is vital to reducing  
8 the estates' exposure to unnecessary additional losses.

9

10 **VI. CONCLUSION**

11 WHEREFORE, Round Table requests that the Court enter its order approving the  
12 assumption of the insurance and premium financing agreements described above, conditioned  
13 upon the curing of all defaults thereunder, if any; and any other relief as it deems just and  
14 appropriate.

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16 DATED: February 9, 2011

Respectfully submitted,

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McNUTT LAW GROUP LLP

By: /s/ Scott H. McNutt  
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Proposed Attorneys for Debtors